IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 699 OF 1989.
WITH
CROSS OBJECTION ST.NO.2/205 OF 1989.

The State of Maharashtra. ... Appellant.

Versus.

Babu Timbo Mhatre
(since deceased through LRs.)
1. Anant Babu Mhatre
2. Raghunath Babu Mhatre
   (since deceased through LRs.)
   a) Smt.Gonubai Raghunath Mhatre.
   b) Rajnath Raghunath Mhatre
   c) Pandit Raghunath Mhatre.
   d) Mrs.Sanjiwani Gomaji Mhatre
      residing at Mamothe, Tal. Panvel,
      Dist. Raigad.
3. Krishna Babu Mhatre.
4. Padmakar Babyu Mhatre.
5. Hanumant Babu Mhatre.
6. Sudhakar Babu Mhatre.
7. Hasubhai Babu Mhatre.
   all residing at Jui Kamothe,
   Taluka Panvel, Dist.Raigad. ... Respondents.

Mrs.G.P.Mulekar for the Appellant.

Shri G.H.Keluskar for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 8th January, 2007.

ORAL JUDGMENT.:

1. Heard the learned A.G.P. for the Appellant and Shri Keluskar for the Respondents.

2. The challenge in this First Appeal is to the Judgment and Award dated 22nd September 1988 passed by

the learned Civil Judge, Senior Division, Raigad at Alibag in Land Acquisition Reference No.180 of 1986. The said reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1891) was made at the instance of the Respondents.

3. The acquired land bearing Survey No.329 Hissa No.3 admeasuring 9200 square meter is situated at village Kamothe, Taluka Panvel, District Raigad. The said land was notified under section 4 of the said Act of 1894 on 3rd February 1970 for the public purpose of New Bombay project. The Award under section 11 of the said Act of 1894 was made on 11th August 1986. By the said Award, the Special Land Acquisition Officer offered market value at the rate of Rs.2/- per square meter. By the impugned Judgment and Award, the learned trial Judge held that the Respondents are entitled to the market value at the rate of Rs.12/- per square meter.

4. The learned A.G.P. appearing for the Appellant submitted that considering the nature of the acquired land, the market value fixed at Rs.12/- per square meter is on the higher side. The learned A.G.P. invited my attention to the evidence of the valuer examined by the Respondents. The learned Advocate for the Respondents in support of cross objection placed reliance on the

decision of the Division Bench of this Court dated 25th and 26th February 1993 in First Appeal No.754 of 1986 (Nama Padu Hudar v/s. State of Maharashtra) and other connected First Appeals. He submitted that considering the evidence of the valuer examined by the Respondents and considering the aforesaid decision of the Division Bench, the Respondents are entitled to the market value atleast at the rate of Rs.18/- per square meter.

5. I have considered the submissions made by the learned Advocates appearing for the parties. My attention has been invited to the decision of the Division Bench in the case of Nama Padu Hudar (supra). In the said decision, the Division Bench dealt with the appeals arising out of the awards made under section 18 of the said Act of 1894. The awards were relating to the various lands acquired from the villages Panvel and Kamothe, taluka Panvel, District Raigad. The lands which were the subject matter of the Appeals before the Division Bench were also notified under section 4 of the said Act of 1894 on 3rd February 1970 for the same public purpose viz. for development of satellite city of Navi Mumbai. The Division Bench considered the location of the two villages and the nature of the lands which were acquired from the said two villages. The Division Bench divided the said lands subject matter of the Appeals before it into five categories. For the

said five categories, the Division Bench fixed the rates of market value depending upon its distance from the Bombay-Pune Highway. For the lands falling in category I, the Division bench awarded the market value at Rs.25/- per square meter. For the lands situated at a maximum distance of 800 meters from the Highway, market value was fixed at Rs.23/- per square meter and for the land situated at the distance between 800 meters and 2200 meters, the market value was fixed at Rs.20 per square meter.

6. I am informed that the said decision of the Division Bench has attained finality. The Apex court in its decision dated 6th March 2006 in Civil Appeal No.1557 of 2006 (Shantadevi Hariram Ruparel v/s. Land Acquisition Officer and another) referred to the decision of the Division Bench in the case of Nama Padu Hudar (supra). The Apex Court approved the method adopted by the Division Bench of dividing the acquired lands into five different categories for the purposes of fixing the market value. In fact the Apex Court issued a direction in the said case to fix the market value of the acquired lands subject matter of the Appeal before the Apex Court in terms of the said decision of the Division Bench. In my view there is no reason why the decision in the case of Nama Padu Hudar (supra) cannot be considered for determining the market value of the

acquired land in the present case.

7. The Respondent examined Shri Jeevan Narayan Kulkarni, a valuer in support of their case. He submitted a valuation report which was proved in his evidence. The said report is at Exh.21. The said report discloses that the acquired land is situated at a distance of 3360 meters from the Highway. The Division Bench fixed the market value of Rs.20/- per sq.meter for the land at village Kamothe which is at a distance of 2200 meters from the Highway. For a land at a distance of 800 meters the marked value fixed by the Division Bench is Rs.23/- per sq.meter. Therefore, the acquired land which is the subject matter of the present Appeal which is at a distance of 3300 meters, the market value cannot be less than Rs.16/- to Rs.17/- per sq.meter.

8. In the Reference Application the Respondents claimed market value at the rate of Rs.15/- per sq.meter. In the cross objection the Respondents are claiming the market value at the rate of Rs.18/- per sq.meter. Since the claim in the Reference under section 18 of the said Act of 1894 was restricted to Rs.15/- per sq.meter, in the cross objection, a rate which is more than Rs.15/- cannot be awarded. Therefore, the Respondents are entitled to the market value at the rate of Rs.15/- per sq.meter.

9. Hence the Appeal preferred by the State will have to be dismissed and the cross objection filed by the Respondent will have to be allowed.

10. Hence the following order is passed:

i) First Appeal No.699 of 1989 is dismissed. The State Government is directed to pay costs of the Appeal to the Respondents.

ii) Cross Objection filed by the Respondents is partly allowed. The impugned Judgment and Award is modified by directing that the original Claimants will be entitled to the market value at the rate of Rs.15/- per sq.meter together with all statutory benefits under sections 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894. The Respondents will be entitled to the proportionate costs from the State Government of the Reference as well as the Cross Objection.

iii) The Reference Court will calculate the amount of compensation payable to the Respondents (Claimants) after notice to the State Government. This exercise will be completed within a period of four

months from the date of receipt the writ of this order from this Court.

iv) Writ of this order be sent immediately.

Judge.